



Order 96-5-21

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Served on May 21, 1996

Issued by the Department of Transportation
on the 15th day of May, 1996

U.S.-Toronto Service Proceeding	Docket OST-95-206
U.S.-Toronto Second Year Service Proceeding	Docket OST-95-782
Pittsburgh-Toronto Air Services	Undocketed

**ORDER IN RE REDESIGNATION OF USAIR
ORDER TO SHOW CAUSE AND GRANTING EXEMPTION**

Effective June 1, 1996, we are redesignating USAir, Inc. (USAir) to serve between Pittsburgh and Toronto under Route A. 8 of the 1966 U.S.-Canada Aviation Agreement. USAir has served the Pittsburgh-Toronto route (Route 679) since last year under authority granted pursuant to the 1995 Air Transport Agreement between the United States and Canada (1995 Agreement).¹ This redesignation of USAir and issuance of a new certificate, in conjunction with the deletion of its certificate authority for Route 679, will result in the activation of Trans World Airlines, Inc.'s (TWA's) backup authority awarded in Order 95-11-1 to operate two daily round-trip scheduled combination frequencies between St. Louis and Toronto, effective June 1, 1996, as a selection for year one Toronto authority.

¹ This Agreement was signed in Ottawa on February 24, 1995.

By this order, we tentatively select Continental Airlines, Inc. (Continental) to operate two daily round-trip scheduled combination frequencies between Newark and Toronto for year two Toronto authority in lieu of the tentative selection of TWA in Order 96-2-45. We also tentatively grant backup authority to Northwest Airlines, Inc. (Northwest) (as backup to both USAir at Washington, D.C. (National) and Continental at Newark) to operate two daily round-trip scheduled combination frequencies between Minneapolis/St. Paul and Toronto for year two Toronto authority. Interested parties are directed to show cause why we should not make the grant of this authority final.

Pending the issuance of a final order in the year two Toronto proceeding, in order to maximize the use of scarce bilateral authority in the circumstances of this case, we grant Continental *pendente lite* exemption authority to begin serving between Newark and Toronto on June 1, 1996, without prejudice to the final outcome in this case.²

Background

Under the provisions of the 1995 Agreement that provides for expanded economic opportunities in the U.S.-Canada aviation market, new service to Toronto is to be phased in over a three-year period.³ During the first year from the date of the 1995 Agreement, the Department selected Delta Air Lines (Delta) to operate between Atlanta and Toronto (Route 678) and USAir to operate between Pittsburgh and Toronto (Route 679), with each carrier able to operate up to two daily round-trip frequencies. The Department also granted backup authority to TWA to operate two daily round-trip scheduled combination frequencies between St. Louis and Toronto. This backup authority awarded to TWA only becomes effective, however, upon the expiration, deletion, or suspension of USAir's certificate authority.

Delta also holds certificate authority (Route 618) to serve the Pittsburgh-Toronto market. That authority was awarded under the provisions of the 1966 United States-Canada Aviation Agreement (1966 Agreement) (U.S. Route A.8). There are no frequency limitations for services on that route, but the unrestricted service is limited to a single carrier. The Department was recently informed that Delta intends to discontinue its Pittsburgh-Toronto service on June 1, 1996. As a result, the unrestricted route opportunity for service in Pittsburgh will become available on that date.

² As we stated in Orders 95-5-3 and 96-2-45, where we granted USAir and TWA exemption authority to serve between Washington, D.C. (National) and Toronto, and St. Louis and Toronto, respectively, the criteria used in selecting carriers for certificate authority are significantly different from the criteria used in the decision to award an exemption. The selection of a carrier in any given exemption case in no way influences the outcome of the certificate proceeding.

³ Phased-in opportunities become available on February 24 of each of the three years beginning with the signing of the Agreement.

By notice dated April 22, 1996, the Department called for exemption applications from carriers interested in serving the Pittsburgh-Toronto market under Route A.8. Carriers already holding the necessary underlying authority to serve the market were told that they need file only a request for designation. Pursuant to the notice, on April 30, 1996, USAir filed a request for designation to serve the Pittsburgh-Toronto market under Route A.8. No other exemption applications or requests for designation were received by the deadline.

For the second year of the 1995 Agreement, the U.S. is able to select up to two more carriers, with each carrier able to operate up to two daily round-trip frequencies. Any U.S. points and carriers may be selected, including existing gateways and incumbent carriers.⁴ By Order 96-2-45, the Department tentatively granted the applications of USAir and TWA to operate two daily round-trip scheduled frequencies each (USAir between Washington, D.C. (National) and Toronto, and TWA between St. Louis and Toronto).

Although not affecting the tentative selection of USAir for second-year route authority in Order 96-2-45 to operate between Washington, D.C. (National) and Toronto, activation of TWA's backup authority awarded in the first-year proceeding renders moot its tentative selection for second-year route authority.⁵ As a result, the Department is free to select another carrier for second-year route authority.

Designation of USAir on Route A.8

Delta holds certificate authority to serve between Pittsburgh and Toronto, which was awarded under the provisions of the 1966 Agreement. There are no frequency limitations for services on that route. Delta intends to discontinue its Pittsburgh-Toronto service on June 1, 1996, however, which will result in the unrestricted route opportunity for service in the Pittsburgh-Toronto market becoming available on that date. On April 30, 1996, USAir filed a request for designation to serve the Pittsburgh-Toronto market under unrestricted Route A.8 of the 1966 Agreement. No other exemption applications or requests for designation were received.

Answers in support of USAir's request for designation were filed by TWA and Continental. No party filed in opposition of designation of USAir on Route A.8.

We have decided to redesignate USAir's Pittsburgh-Toronto services under Route A.8 of the 1966 Agreement. Delta's suspension of service on Route A.8 makes available a valuable unrestricted route opportunity for Pittsburgh-Toronto service. Redesignation of USAir's Pittsburgh-Toronto service under unrestricted Route A.8

⁴ A designation for the second year under these provisions cannot be used to increase the number of frequencies available to a carrier awarded authority for the first year.

⁵ As Continental correctly noted, the 1995 Agreement also prohibits the award of two second-year routes to the same carrier.

enables us to expand and maximize U.S.-Toronto air services. Given the fact that Canadian air carriers already enjoy open access to all U.S. markets, the ability to expand our services during the transitional period is clearly in the public interest.

As a result of the redesignation of USAir, we are deleting USAir's certificate authorizing it to serve between Pittsburgh and Toronto under Route 679, effective June 1, 1996. In place of that certificate, we are issuing USAir a new certificate authorizing it to serve the Pittsburgh-Toronto market under unrestricted Route A.8 of the 1966 Agreement, also effective June 1, 1996.

Activation of TWA's Backup Authority

By Order 95-11-1, the Department granted backup authority to TWA to operate two daily round-trip scheduled combination frequencies between St. Louis and Toronto. This backup authority only becomes effective, however, upon the expiration, deletion, or suspension of USAir's Pittsburgh-Toronto certificate for Route 679.⁶

The action taken above, granting USAir's request to designate it to operate between Pittsburgh and Toronto under Route A.8 of the 1966 Agreement, and the resulting deletion of its Pittsburgh-Toronto certificate for Route 679, effective June 1, 1996, will immediately trigger automatic activation of TWA's backup authority to serve the St. Louis-Toronto market on that date. Pending the activation of that backup authority, TWA is still able to serve that market pursuant to the *pendente lite* exemption authority that it was granted in Order 96-2-45. On June 1, however, that *pendente lite* exemption authority will be revoked, in light of the activation of TWA's backup authority awarded in Order 95-11-1, and in order to allow the Department to select another carrier for second year authority.

TWA stated in its Answer that it did not object to activation of the backup authority it was awarded in the first-year case. The activation of TWA's backup certificate will maximize the use of scarce bilateral authority available in the first year of the 1995 Agreement.

Tentative Grant of Second-Year Route Authority

Five certificate applications were originally filed for the two available new service opportunities between the U.S. and Toronto during the second year of the Agreement—Continental for Newark-Toronto, Midway for Raleigh/Durham-Toronto, Northwest for Minneapolis/St. Paul-Toronto, TWA for St. Louis-Toronto, and USAir for Washington, D.C. (National)-Toronto. Each applicant proposed to operate the authorized maximum of two round-trip nonstop flights per day in its market.

⁶ The relevant certificate provisions read as follows: "This certificate shall not become effective until the certificate authority of USAir . . . has expired, or has been deleted or suspended"

By Order 96-2-45, the Department tentatively granted USAir's application to serve the Washington, D.C. (National)-Toronto market and TWA's application to serve the St. Louis-Toronto market. As a result of the automatic activation of TWA's backup certificate awarded for first year Toronto authority on June 1, 1996, TWA's application and tentative selection for second year authority are now moot. Therefore, the applications of Continental, Northwest, and Midway remain under consideration for the primary selection in the second-year case. A table summarizing the basic service proposals of these three carriers is attached to this order (Appendix A).

Northwest, in its response,⁷ as well as Midway and the Raleigh-Durham Airport Authority, in a contingent motion, argued that in light of changed circumstances since February, when the Department's Show-Cause Order in the second-year case was issued, we must reopen the record, accept additional evidence and argument, and completely reassess which carriers should be awarded the two primary and two backup awards available.⁸ USAir⁹ and Continental answered in opposition to the argument that the record should be reopened. Northwest, in response to Midway's and the Raleigh-Durham Airport Authority's motion, argued again in favor of reopening the record, incorporating by reference the arguments it made in its own answer.

We do not find the arguments for reopening the record in the second-year proceeding to be persuasive. Notwithstanding the developments discussed above, we believe that there is no basis to disturb the tentative selection of USAir to serve the Washington, D.C. (National)-Pittsburgh market. The reasons for tentatively selecting USAir remain valid, and are not affected by these changed circumstances. Further, there is an ample record on which the Department can proceed to select which carrier should replace TWA as the second year two pick.

Any delay in determining which carrier should replace TWA would only result in the potential wasting of valuable bilateral rights, given that we are already nearly three months into the second year of the Agreement, and some time must be anticipated to elapse before any carrier can start up operations in a new market. In any case, the use of show cause procedures will ensure the parties an adequate opportunity to address any issues they feel are not fully considered in the tentative selections for route authority in the second year case. Accordingly, we have

⁷ Northwest also filed a motion for leave to file an otherwise unauthorized document, which we will hereby grant.

⁸ Midway and the Raleigh-Durham Airport Authority argued further that these actions should be accomplished by vacating Order 96-2-45, which made the tentative selections in the second-year proceeding.

⁹ USAir also filed a motion for leave to file an otherwise unauthorized document in its filing of May 8, 1996, which we will hereby grant.

determined to deny the motion of Midway and the Raleigh-Durham Airport Authority.

In consideration, then, of the applications of Continental, Midway, and Northwest, we reviewed the Direct and Rebuttal Exhibits each carrier filed in support of its application, including, where relevant, self-diversion revenue data. In addition, we reviewed the Direct and Rebuttal Exhibits filed by all of the civic parties. Specifically, we reviewed Direct Exhibits filed by the Regional Business Partnership (Newark), the Hillsborough County Aviation Authority, and the Raleigh-Durham Airport Authority (filed jointly with Midway). We also reviewed Rebuttal Exhibits filed by the Regional Business Partnership (Newark), and the Raleigh-Durham Airport Authority (filed jointly with Midway).

Briefs in support of the applications were also filed by each of the three applicant carriers, as well as by several civic parties, and were reviewed in light of the ineligibility of TWA for a second-year award. Specifically, we reviewed the Minnesota Department of Transportation's Brief filed in support of Northwest, the Hillsborough County Aviation Authority's Brief filed in support of Midway, the Regional Business Partnership (Newark)'s Brief filed in support of Continental, and the Raleigh-Durham Airport Authority's Brief filed (jointly with Midway) in support of Midway.

As we indicated in Orders 95-11-2 and 96-2-45, in selecting carriers to provide the service at issue, our principal objective is to maximize the public benefits that can be expected to result from awarding this new authority. In this regard, we indicated that we would place primary emphasis on the effects of the applicants' service proposals on the overall market structure and the level of competition both between U.S. and Canadian flag carriers and among U.S. flag carriers in the U.S.-Toronto market, and any other market(s) shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. We stated that we would also consider which carriers will be most likely to offer and maintain service that provides the maximum benefits to the traveling and shipping public. Finally, we indicated that we would consider the applicants' fare proposals, and other factors historically considered in carrier selection where they are relevant.

Position of the Parties

Continental

Continental proposes to operate two daily roundtrip Newark-Toronto nonstop flights with 128-seat B-737-300 aircraft, providing single-plane service to Raleigh-Durham and Greensboro. In support of its application, Continental argues that (1) it would bring critical public benefits to the largest local Toronto market and the predominant east coast market; (2) it is the only applicant with a realistic traffic forecast; (3) it would be the first U.S. carrier to serve the Newark-Toronto market, which is underserved and has by far the most O&D passengers of any applicant's gateway; (4) it is the only carrier that proposes service at a true east coast hub; and (5) it would compete against the two largest U.S.-Canadian transborder alliances in their home markets.

In response, the other applicants contend that (1) New York/Newark is already the best served Toronto market, with 30 daily nonstop flights provided by three carriers, including 12 daily roundtrips by a U.S. carrier that is not frequency or capacity restrained; (2) selection of Continental would provide little competitive impact because of the high level of service already provided by other carriers in the New York/Newark market; (3) Continental's relationship with Air Canada would minimize its incentive to compete with the Canadian carrier; and (4) Continental's on-line connecting service would effectively benefit far fewer cities and passengers than claimed, and would not adequately serve the west.

Midway

Midway proposes to operate two daily roundtrip Raleigh/Durham-Toronto nonstop flights with 98-seat FOKR-100 aircraft, providing single-plane service to Tampa. In support of its application, Midway argues that (1) Raleigh/Durham is Midway's principal hub, and the largest U.S.-Toronto market without nonstop or single-plane service; (2) as a low-cost carrier, Midway will induce meaningful price competition in the U.S.-Toronto market; and (3) the Raleigh/Durham-Toronto proposal would greatly enhance the market structure and level of competition between the U.S. and Canada.

In reply, the other carriers argue that (1) Midway has forecast the second smallest number of gateway market passengers and even that forecast is inflated; (2) the proposal lacks sufficient connecting service and greatly reduces benefits for connecting passengers; (3) by operating aircraft with fewer than one-hundred seats, Midway will not optimize the Toronto opportunity; (4) the Tampa-Toronto market is already well served by Delta and USAir; and (5) Midway is not a low-cost carrier.

Northwest

Northwest proposes to operate two daily roundtrip Minneapolis/St. Paul-Toronto nonstop flights with 184-seat B-757 aircraft, providing single-plane service to Denver and Portland. In support of its application, Northwest argues that (1) Minneapolis is a large Northwest hub with substantial direct online connections providing connecting service for the largest number of western points; (2) the west is underserved, with only 2 of 22 U.S. flag service gateways to Toronto and 26% of the nonstop flights; (3) Northwest's Minneapolis service would create intergateway and intercarrier competition with American and United at Chicago; (4) Northwest would incur minimal marketing costs because it is already established at Toronto; and (5) Northwest is the Toronto incumbent with the fewest gateways and the least access to Toronto traffic.

In reply, the other applicants argue that Northwest's proposal lacks significant public benefits because (1) Northwest would largely duplicate existing service over Chicago by American and United, and its own service over its larger Detroit hub, both of which serve western points with nearly equal circuitry; (2) Minneapolis is a relatively small local O&D market; and (3) most of Northwest's on-line connections would serve points with few Toronto passengers.

Tentative Decision

This proceeding now offers us the choice of one of three carriers and gateway points. We have tentatively decided that the selection of Continental effectively achieves the most public interest benefits satisfying the selection criteria of this proceeding. More specifically, we tentatively find that the proposal of Continental will offer the strongest competition to foreign flag carriers in the U.S.-Toronto market, especially in the largest single U.S.-Toronto market, which is also the market where Canadian flag carriers operate their largest number of Toronto frequencies. In addition, the selection of Continental will provide intergateway and intragateway competition with both U.S. and foreign flag carriers, while introducing a new carrier to the U.S.-Toronto market at its major east coast hub.

As we stated in Order 95-11-2, instituting the second year carrier selection case, the primary emphasis in this proceeding is on the effects of the applicants' service proposals on the overall market structure and the level of competition both between U.S. and Canadian flag carriers and among U.S. flag carriers in the U.S.-Toronto market. It is critically important in shaping the developing competitive environment that we select the carriers that will be the strongest competitors in the market if we are to maximize the use of these valuable U.S.-Toronto bilateral rights. We tentatively find that the selection of Continental will result in the greatest level of competition with both Canadian and other U.S. flag carriers, while having a positive effect on the overall U.S.-Toronto market structure.

Competitive Issues

In assessing the competitive impact of each carrier's proposal, we were compelled to consider the issue of competition among U.S. carriers and of competition between U.S. carriers as a class and their foreign competitors. In this case, selection of Continental will maximize competition both among U.S. flag carriers and between U.S. and Canadian flag carriers in the U.S.-Toronto market. The competition that Continental will offer to both American Airlines and two Canadian flag carriers in the predominant New York-Toronto market is an especially important consideration in the interim period when established U.S. carriers and Canadian carriers are not frequency constrained, but new entrant Toronto carriers are limited to two daily frequencies. The selection of Continental also offers the competitive benefit of introducing a new U.S. flag carrier that does not now serve the U.S.-Toronto market with its own aircraft. In addition, the selection of Continental provides competitive U.S. flag service in the largest local U.S.-Toronto market at a major airport currently unserved by U.S. flag carriers.

Each of the other two applicants has strong points in its favor, and each would offer competition to Canadian carriers and other U.S. carriers in some respect; however, those factors do not outweigh the decisive advantage of Continental in terms of competition offered to U.S. and Canadian carriers in the New York-Toronto market. We tentatively find that the selection of Continental in this proceeding will provide the best overall market structure in the United States-Toronto market pending the full liberalization of the market, which will be phased in incrementally, and will be completed in less than two years. We tentatively find that Continental, proposing to use its significant hub structure to route traffic over its major gateway at Newark, combined with the enormous size of its local O&D market, nearly ten times the size of Midway's and Northwest's local O&D markets combined, is in the best position among the applicants to do just this.

Northwest proposes to use its hub at Minneapolis/St. Paul, competing for nonstop Minneapolis/St. Paul-Toronto traffic with Air Canada. Since Minneapolis/St. Paul, a relatively small local O&D market, already receives single-plane U.S. flag service from Toronto three times daily, and since Northwest already has unrestricted authority to provide this service over its larger hub at Detroit which allows it to provide attractive behind-gateway service to many cities, the addition of two U.S.-flag nonstop frequencies at Minneapolis/St. Paul would have relatively less competitive impact than the selection of Continental. Midway would offer no competition to Canadian carriers in the nonstop Raleigh/Durham-Toronto market, since no Canadian carriers provide nonstop service there. In addition, the selection of Continental would introduce attractive single-plane service to the Raleigh/Durham-Toronto market by that carrier.

The fact that up to four more carriers will be able to enter the market less than one year from now, in February 1997, and an unlimited number of carriers will be free to enter the market without frequency or capacity restraints in February 1998, makes it

possible for the other two applicants to begin serving Toronto from their proposed gateways in the near future. Immediately, however, the U.S.-Toronto market will benefit most from Continental's strength and resulting ability to challenge Air Canada, Canadian Airlines International, and American Airlines in markets that these carriers have long dominated. This competition, although initially limited to only two frequencies a day, is critical if we are to avoid handicapping the U.S. carrier position in the U.S.-Toronto market.

We tentatively find that the selection of Continental will also further intergateway and intragateway competition. In addition to providing head-to-head competition with U.S. and Canadian carriers in the large New York-Toronto market, Continental will compete with American, Delta, USAir, Air Canada, and Canadian Air International at a large number of east coast and southeastern markets, including Florida. Continental, by offering attractive service options to passengers and shippers with its developed hub structure and significant online connecting services, and in particular its single-plane services, will provide considerable competition against both U.S. and Canadian carriers at these and other gateways.

Service Benefits

In tentatively selecting the carriers that will provide the maximum benefits to the traveling and shipping public in the United States-Toronto market, we have also looked at the service benefits that can be accomplished by the award of authority at issue here. This approach ensures that the scarce bilateral rights available in this market under the Agreement will be used to the fullest extent possible.

The tentative selection of Continental furthers the important goal of maintaining a strong U.S. flag presence in this huge market serving Canada's principal traffic point and our nation's largest city. The opportunity to select a U.S. flag carrier to provide this service is a valuable bilateral right that should not be wasted. Newark's location also enables Continental to provide attractive service options to the enormous local O&D market, while providing online connecting services to a large number of beyond points.

Northwest's proposed service at Minneapolis/St. Paul offers relatively fewer service benefits than the selection of Continental. The local O&D market at Minneapolis/St. Paul is only a fraction of the size of the New York O&D market, and the connecting services that Northwest would introduce would largely duplicate existing service over Chicago by American and United, and over St. Louis by TWA, as well as its own service over its larger Detroit hub, all of which serve western points with nearly equal circuitry. Midway's proposed service at Raleigh/Durham offers even fewer service benefits, given the size of the local O&D market, which in any event would be well served by Continental's single-plane service, and the relatively small number of connecting passengers. Of the three proposed gateways, we tentatively find that service benefits are maximized by the selection of Continental at Newark.

Backup Authority

Having tentatively selected Continental to serve Newark-Toronto we must now address the issue of backup authority. With applications from Northwest to serve Minneapolis/St. Paul-Toronto, and Midway to serve Raleigh/Durham-Toronto, the issue before us is whether to select one carrier to serve behind both of the primary routes tentatively awarded here and in Order 96-2-45, or to select separate carriers to serve behind the two primary carriers selected. We have tentatively determined to award backup authority to Northwest behind both primary carriers.

The tentative award of backup authority to Northwest offers significant public interest benefits. Our tentative decision in the award of primary route authority is only that these benefits are less in magnitude than the benefits offered by the proposals of USAir and Continental. Selecting Northwest to serve between Minneapolis/St. Paul and Toronto, as a backup to both USAir and Continental, offers the potential competitive benefits of introducing convenient nonstop service by a major U.S. carrier well poised to compete head-to-head with Air Canada. In addition, the award of backup authority to Northwest would allow Northwest to use its significant hub structure to provide service options to a large number of behind-gateway passengers. Northwest's existing operations at both Minneapolis/St. Paul and Toronto would also allow it to enter the market quickly in the event that its backup authority is activated. We tentatively find that the public interest benefits of Northwest's proposal, on balance, outweigh the benefits that selection of Midway would provide.

Dormancy Provisions

As in the first year proceeding, we have tentatively decided to include a 45-day dormancy provision in the certificates that will be issued pursuant to a final order in this case.

Exemption Authority

On February 24, 1996, the second year authority at issue here became available. We have determined that it is in the public interest to maximize the use of this scarce bilateral authority and to immediately enter new U.S. flag competition to the unrestricted Canadian service in the New York-Toronto market by allowing service to commence as soon as possible, especially since we are now almost three months into year two. However, we are not prepared to omit the procedural step of a show-cause order, with its opportunity to allow interested parties to comment on our tentative decision. Therefore, we have decided to grant Continental temporary, *pendente lite* exemption authority by this order to serve Newark-Toronto, which we have tentatively decided to award here, effective June 1, 1996. USAir was already awarded *pendente lite* exemption authority to serve Washington, D.C. (National) by Order 95-5-3, and TWA was awarded *pendente lite* exemption authority to serve St. Louis-Toronto by Order 96-2-45. TWA will operate under that authority until its first year backup authority becomes effective on June 1, 1996, the date on which USAir will begin operating its Pittsburgh-Toronto services under its Route A.8 designation. Granting Continental *pendente lite* exemption authority provides it an opportunity to serve pending the issuance of a final order, while preserving our ability to change our tentative decision if we receive comments on this order or Order 96-2-45 that justify such a change.

The authority granted here is only temporary, and will not affect the final outcome of this proceeding. Furthermore, no party is prejudiced by granting this exemption. Like USAir's *pendente lite* exemption authority already awarded by the Department, Continental's authority will remain effective for ninety days following the issuance of a final order in this proceeding.

ACCORDINGLY,

1. Effective June 1, 1996, we delete the certificate of USAir for Route 679 which authorizes it to serve between Pittsburgh and Toronto under Route 679 of the 1995 Air Transport Agreement between the United States and Canada;¹⁰
2. Effective June 1, 1996, we issue a new certificate to USAir for Pittsburgh-Toronto service to reflect its redesignation under Route A.8 of the 1966 United States-Canada Aviation Agreement;
3. Unless disapproved by the President of the United States under 49 U.S.C. section 41307, the action taken in paragraphs 1 and 2, and the attached certificate shall become effective on the 61st day following its submission for section 41307

¹⁰ This action will automatically activate the backup authority of TWA awarded in Order 95-11-1 to operate two daily round-trip scheduled combination frequencies between St. Louis and Toronto on that date

review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹¹

4. Effective June 1, 1996, we revoke the exemption authority of TWA granted in Order 96-2-45 to operate two daily round-trip scheduled combination frequencies between St. Louis and Toronto;

5. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions;

6. We direct interested persons wishing to comment on our tentative findings and conclusions, or objecting to the issuance of the order described in paragraph 5, to file an original and 5 copies in Docket OST-95-782, and serve on all persons on the service list in that docket, a statement of such objections, together with any supporting evidence the objector wishes the Department to notice, not later than May 27, 1996. Answers to objections shall be due June 3, 1996;¹²

7. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action. If no objections are filed, we will deem all further procedural steps to have been waived, and proceed to enter a final order subject to Presidential review under 49 U.S.C. § 41307;

8. Beginning June 1, 1996, we temporarily exempt Continental from the provisions 49 U.S.C. section 41101 and the terms, conditions, and limitations of its certificates of public convenience and necessity to the extent necessary to permit it to provide scheduled foreign air transportation of persons, property, and mail between New York (Newark), and Toronto, Canada, up to a maximum of two flights per day in each direction. This authority will remain effective for ninety days following the issuance of a final order in Docket OST-95-782;

9. We hereby grant the motions of Continental, Northwest, TWA, and USAir to file otherwise unauthorized documents;

10. We hereby deny the motion of Midway and the Raleigh-Durham Airport Authority to vacate Order 96-2-45 and reopen the record in Docket Ost-95-782;

¹¹ This order was submitted for section 41307 review on May 15, 1996. On May 17, 1996, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

¹² The original filing should be on 8 1/2" X 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

11. To the extent not granted, we deny all other requests in these proceedings;
and

12. We shall serve this order on all parties in Dockets OST-95-206 and OST-95-782, the Canadian Ambassador, the Department of State (Office of Aviation Negotiations), and the FAA.

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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on the World Wide Web at
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